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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91219382
Party	Defendant K.S. Productions, Inc.
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Date	12/29/2014
Attachments	KS AnswerTTAB Frank The Man.pdf(110824 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Application Serial No. 86/268,834
By KS Productions, Inc. for the mark FRANK THE MAN THE MUSIC
Filed: May 1, 2014
Published in the *Official Gazette* on October 21, 2014

ROBERT ANDERSON,

Opposer,

v.

K.S. PRODUCTIONS, INC.,

Applicant.

Opposition No. 91219382

ANSWER TO NOTICE OF OPPOSITION

K.S. Productions, Inc. (“K.S. Productions” or “Applicant”) by its undersigned counsel, answers the Notice of Opposition (the “Opposition”) that Robert Anderson (“Anderson” or “Opposer”) filed against K.S. Productions’ Trademark Application Serial No. 86/268,834 for FRANK THE MAN THE MUSIC (the “Mark”), as follows, with each numbered paragraph corresponding to the numbered paragraph of the Opposition. K.S. Productions reserves the right to amend or supplement this Answer as appropriate:

1. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegation in Paragraph 1 of the Opposition, and therefore denies it.
2. Applicant admits that it is a Tennessee corporation with its principal place of business being 1284 Overton Circle, Gallatin, Tennessee 37066.
3. The averments in Paragraph 3 are denied except as consistent with the following:
Applicant admits on information and belief that Opposer is a professional singer and

impressionist. Applicant is without information regarding Opposer's alleged performing schedule or locations, and also is without information as to the alleged statement purportedly from the *Las Vegas Review Journal*. Applicant denies that any statement by the *Las Vegas Review Journal* that Opposer purports to rely upon would be probative, relevant or admissible. Applicant denies Opposer's claim that he "creat[ed] the genre of singing impressionism." Applicant avers that, among others, Opposer's attempts at "singing impressionism" were predated by multiple performers, including but not limited to Rich Little, Fred Travalena, Frank Gorshin, Babe Pier and others.

4. Applicant denies the allegations in Paragraph 4 of the Opposition.

5. Applicant denies the allegations in Paragraph 5 of the Opposition.

6. Applicant denies the allegations in Paragraph 6 of the Opposition.

7. Applicant denies the allegations in Paragraph 7 of the Opposition.

8. Applicant denies that the specimen provided by Applicant to the USPTO was a poster. The specimen submitted by Applicant, and the trademark applications description thereof, speak for themselves.

9. Applicant admits that the specimen submitted contains a photograph of Opposer. Applicant avers that Opposer provided the photograph to Applicant. Applicant further avers that Opposer did so with the express intent, understanding, and consent that the photograph would be used for marketing material, including the material that Applicant filed as the specimen in its trademark application.

10. The specimen submitted speaks for itself.

11. Denied. Applicant avers that a third party introduced Opposer to Applicant's president in or about late July 2012. The purpose of the introduction was to pursue Applicant's

president as someone who might be interested in managing a Frank Sinatra project and help raise funds to create, develop, promote, and operate the production. Opposer did not create the mark FRANK THE MAN THE MUSIC, as Opposer has claimed or implied. Any averments inconsistent with the foregoing are denied.

12. The email speaks for itself. Any averments inconsistent with the foregoing are denied.

13. Denied. Applicant avers that Opposer never had rights to the Mark as he is presently alleging.

14. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegation in Paragraph 14 of the Opposition, and therefore denies it.

15. The Venetian's website speaks for itself. Applicant denies that Opposer has the rights he is currently alleging. Any averments inconsistent with the foregoing are denied.

16. Applicant denies that Opposer has been using the Mark in commerce since June 2012. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegation regarding how Opposer claims currently to be using the Mark, and therefore denies it.

17. Applicant denies the allegations in Paragraph 17 of the Opposition. Applicant avers that the Opposer did not create or develop the Mark

18. Applicant denies the allegations in Paragraph 18 of the Opposition. Applicant avers that the Opposer did not create or develop the Mark

19. Applicant denies the allegations in Paragraph 19 of the Opposition.

20. Applicant denies the allegations in Paragraph 20 of the Opposition.

21. Applicant denies the allegations in Paragraph 21 of the Opposition.

22. Applicant denies the allegations in Paragraph 22 of the Opposition.
23. Applicant denies the allegations in Paragraph 23 of the Opposition.
24. Applicant denies the allegations in Paragraph 24 of the Opposition.
25. Applicant denies the allegations in Paragraph 25 of the Opposition.
26. Applicant denies the allegations in Paragraph 26 of the Opposition.
27. Applicant denies the allegations in Paragraph 27 of the Opposition.
28. Applicant denies the allegations in Paragraph 28 of the Opposition.
29. Applicant denies the allegations in Paragraph 29 of the Opposition.

All averments not specifically admitted are hereby denied. Applicant denies that Opposer is entitled to any of the relief sought.

As to the numbered clauses in the paragraph beginning with “WHEREFORE”:

1. Applicant denies the allegations in Paragraph 1.
2. Applicant denies the allegations in Paragraph 2.
3. Applicant denies the allegations in Paragraph 3.
4. Applicant admits that it has used the Mark. Applicant denies the allegations in Paragraph 4 that Applicant has abandoned or engaged in conduct that has caused the Mark to lose significance as a source-identifier.
5. Applicant denies the allegations in Paragraph 5.

AFFIRMATIVE DEFENSES

1. Opposer’s claims are barred in whole or part by the equitable doctrines of estoppel, laches, unclean hands, and waiver.
2. Opposer’s claims are barred in whole or part by contract.
3. Opposer’s claims are barred due to lack of standing.

WHEREFORE, Applicant requests that the Opposition be rejected, that judgment be entered in favor of Applicant, and for all other relief to which it is justly entitled.

Respectfully submitted,

K.S. PRODUCTIONS, INC.

Date: December 29, 2014

By: /s/ Robb S. Harvey
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Attorneys for Applicant, K.S. Productions, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and copy of the foregoing ANSWER TO NOTICE OF OPPOSITION has been served via First-Class Mail to counsel for Opposer on December 29, 2014:

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/s/ Todd R. Hambidge